

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED
DEC 14 2016
Clerk, U.S. District Court
District Of Montana
Missoula

YMIR-JULE VON KOENIGSBERG-
TRYVALDSEN,

Petitioner,

vs.

LEROY KIRKEGARD, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondent.

CV 16-38-H-DLC-JTJ

ORDER

On November 16, 2016, United States Magistrate Judge John T. Johnston entered his Findings and Recommendations, recommending that Plaintiff Ymir-Jule von Koenigsberg-Tryvaldssen's ("von Koenigsberg-Tryvaldssen") petition be dismissed as time barred. On December 1, 2016, the Court received von Koenigsberg-Tryvaldssen's objection to Judge Johnston's Findings and Recommendations, and so he is entitled to a de novo review of those findings and recommendations to which he specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Notwithstanding the above, “[w]here a petitioner’s objections constitute perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original habeas petition, the applicable portions of the findings and recommendations will be reviewed for clear error.” *Rosling v. Kirkegard*, 2014 WL 693315 at *3 (D. Mont. Feb. 21, 2014) (citations omitted).

Having reviewed von Koenigsberg-Tryvaldssen’s objection, the Court finds that he fails to articulate any specific issue with Judge Johnston’s reasoning, and instead objects “IN TOTO” to the Findings and Recommendations. (Doc. 9.) Mr. von Koenigsberg-Tryvaldssen has not shown that some extraordinary circumstance stood in his way and prevented him from timely filing his habeas petition. The Court agrees with Judge Johnston that von Koenigsberg-Tryvaldssen has failed to prove that the one year statute of limitations period under 28 U.S.C. § 2254 should be equitably tolled.

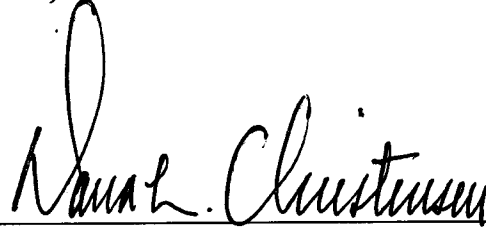
Accordingly, the Court reviews Judge Johnston’s Findings and Recommendations for clear error and, finding none,

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 8) are ADOPTED IN FULL. Ymir-Jule von Koenigsberg-Tryvaldssen's petition for writ of habeas corpus (Doc. 1) is DISMISSED as time barred.

IT IS FURTHER ORDERED that the Clerk of Court shall enter by separate document a judgment of dismissal.

IT IS FURTHER ORDERED that a Certificate of Appealability is DENIED.

DATED this 14th day of December, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court